26 CFR 601.201: Rulings and determination letters.
(Also, Part I, section 412.)

Rev. Proc. 99–45

Section 1. Purpose and Scope

This revenue procedure modifies Rev. Proc. 95–51, 1995–2 C.B. 431, which provides approval to change the funding method (including the asset valuation method) used for a defined benefit pension plan. This revenue procedure modifies Rev. Proc. 95–51 to provide approval for a change in funding method in connection with certain mergers; to clarify that the prohibition of a change in method where there is a negative unfunded liability applies only in certain circumstances with respect to a change in funding method involving a spread gain method; to provide that the comparison of the results of new valuation software to the results of old valuation software may be made on the basis of the prior year; and to provide, in certain situations, that the requirement that the plan administrator approve of the change in funding method will be satisfied if the plan administrator is made aware of the change.

Section 2. Background

.01 Section 412(c)(5)(A) of the Internal Revenue Code ("the Code"), as amended, and section 302(c)(5)(A) of the Employee Retirement Income Security Act of 1974 (ERISA), Pub. L. 93-406, 1974–3 C.B. 1, 40, as amended, state that if the funding method of a plan is changed, the new funding method shall become effective only if the change is approved by the Secretary.

.02 Section 1.412(c)(2)–1 of the Income Tax Regulations generally provides that a change in the actuarial valuation method used to value the assets of a plan is a change in funding method that requires approval under § 412(c)(5) of the Code.

.03 Rev. Proc. 95–51 provides approval for certain changes in funding method. Section 3 of Rev. Proc. 95–51 provides approval for changes to certain specific methods including certain asset valuation methods. Section 4 of Rev. Proc. 95–51 provides various special approvals for changes. Section 5 of Rev. Proc. 95–51 provides rules relating to the establishment and maintenance of amortization bases upon changing methods. Section 6 of Rev. Proc. 95–51 provides restrictions under the revenue procedure.

.04 Rev. Proc. 98–10, 1998–2 I.R.B. 35, modified Rev. Proc. 95–51 to provide approval for additional changes in asset valuation method and for certain changes in valuation software. Rev. Proc. 98–10 also clarified and modified other provisions of Rev. Proc. 95–51.

Section 3. Additional Approvals under Rev. Proc. 95–51

.01 Section 4 of Rev. Proc. 95–51 (Special Approvals) is modified to add a new section 4.06 as follows:

.06 Approval for *De Minimis* Mergers

(1) Approval is granted for a change in method in connection with a merger described in paragraph (2) where the procedures set forth in paragraphs (3) through (5) below are followed.

(2) The merger involves the merger of a smaller plan (within the meaning of § 1.414(l)–1(h)(1)) and a larger plan (within the meaning of § 1.414(l)–1(h)(1)). For purposes of this paragraph (2), the rules of §§ 1.414(l)–1(h)(2), 1.414(l)–1(h)(3), and 1.414(l)– 1(h)(4) apply in determining whether a merger is *de minimis.*

(3) For the period from the beginning of the plan year of the smaller plan to the date of the merger, the charges and credits to the funding standard account for the smaller plan are determined without regard to the merger. If that period is less than a full 12-month plan year, the charges and credits to the funding standard account for the smaller plan for this period are ratably adjusted using the principles of Rev. Rul. 79–237, 1979–2 C.B. 190, in the same manner as if the date of the merger was the date of plan termination of the smaller plan. The deductible limit under § 404 for contributions to the smaller plan is determined by treating the period from the beginning of the plan year to the date of merger as a short plan year and following the procedure set forth in section 5 of Rev. Proc. 87–27, 1987–1 C.B. 769. Schedule B of Form 5500 is filed for the smaller plan for the period from the beginning of the plan year of the smaller plan to the date of the merger. Any contributions made for the smaller plan after the date of the merger, but not later than 8½ months after the date of the merger, are credited to the funding standard account of the smaller plan for this period. For purposes of applying § 4971(b) (but not § 4971(a)) with respect to the smaller plan, any funding deficiency that existed for the smaller plan is considered corrected as of the date of merger.

(4) If the valuation date for the larger plan for the plan year in which the merger occurs precedes the date of the merger, the charges and credits to the funding standard account for the larger plan for that plan year are determined without regard to the merger. Consequently, Schedule B of Form 5500 for the plan year of the larger plan in which the merger occurs is filed without regard to the merger in such a case. Similarly, the deductible limit determined under § 404 with respect to the plan year of the larger plan in which the merger occurs is determined without regard to the merger.

(5) For the actuarial valuation of the larger plan as of the valuation date coincident with or next following the date of the merger, the funding method (including asset valuation method) used is that for the larger plan, and the funding method (including asset valuation method) used for the smaller plan is disregarded. The charges and credits to the funding standard account for the larger plan are determined by treating the net effect of the change in assets and liabilities due to the merger in the same manner as any other gain or loss experienced by the larger plan. Consequently, any amortization bases, credit balances, or funding de-

ficiencies with respect to the smaller plan are disregarded for purposes of applying § 412 and § 4971 with respect to the larger plan.

.02 Section 4 of Rev. Proc. 95–51 (Special Approvals) is modified to add a new section 4.07 as follows:

.07 Approval for Mergers Other Than *De Minimis* Mergers

(1) Approval is granted for a change in method that results from a merger of one plan with another plan in a given plan year where all the conditions set forth in paragraphs (2) through (6) are satisfied, and the procedures set forth in paragraphs (7) through (13) are followed.

(2) The merger is not a de minimis merger within the meaning of § 1.414(l)–(h).

(3) The funding method (without regard to the asset valuation method) used for each of the plans is a method described in section 3.

(4) Both plans have the same plan year and a valuation date that is either the first or last day of the plan year.

(5) The date of the merger is either the first day of the plan year or the last day of the plan year of the two plans.

(6) In a case in which the date of the merger is the first day of the plan year, neither plan has a funding deficiency for the prior plan year. In a case in which the date of the merger is the last day of the plan year, neither plan has a funding deficiency for the plan year of the merger (after taking into account contributions made after the date of the merger as provided in paragraph (13) below).

(7) If the date of the merger is the first day of the plan year, the minimum funding standard of § 412 and the deductible limit of § 404 are determined for the merged plan for the entire plan year in which the merger occurs in the manner provided in paragraphs (8), (9), (10), (11), and (12) below. Consequently, for the plan year in which the merger occurs, only one Schedule B of Form 5500 is filed for the merged plan in such a case.

(8) If the same asset valuation method (in all respects) is used for each of the two plans, the asset valuation method of the merged plan is that method. If the same asset valuation method (in all respects) is not used for each of the two plans (for example, the smoothing period is three years for one of the plans, and five years for the other plan), the asset valuation method used for the merged plan must be an asset valuation method described in section 3.

(9) If the funding method (without regard to the asset valuation method) used for each of the two plans is the same, that funding method is continued for the plan after the merger. If the funding method (without regard to the asset valuation method) used for each of the two plans is not the same, then the funding method used for the ongoing plan is continued after the merger. For this purpose, the ongoing plan is the plan as designated by the plan administrator (within the meaning of § 414(g)), whose name and plan number will continue to be reported on Schedule B of Form 5500 for years after the merger. The funding method used for the plan which is not the ongoing plan is disregarded.

(10) An experience gain or loss is determined separately for each of the two plans, for the period prior to the date of the merger, without regard to the merger and any associated change in funding method. The preceding sentence applies only to the extent that an experience gain or loss would have been determined under the methods used for the plans prior to the merger.

(11) All amortization bases that were maintained for the two plans continue to be maintained for the merged plan to the extent they would be maintained under the funding method used for the merged plan. The credit balances, if any, of each of the two plans from the prior year are carried forward to the current plan year, and combined.

(12) If an unfunded liability is determined under the funding method used for the ongoing plan, it must be determined after any change in actuarial assumptions and methods (including a change in asset valuation method pursuant to paragraph (8)). In the case of such a funding method that is a spread gain method, the unfunded liability is redetermined in the same manner that the unfunded liability was originally determined for the ongoing plan. Therefore, the amortization base established pursuant to the rules of section 5.01(2) will reflect any change of actuarial assumptions and methods. For purposes of this paragraph, a spread gain method is any method that does not directly calculate an accrued liability. See Rev. Rul. 81–13, 1981–1 C.B. 229, for whether a funding method directly calculates an accrued liability.

(13) If the date of the merger is the last day of the plan year, the minimum funding standard under § 412 and the deductible limit under § 404 for each of the plans for the plan year in which the merger occurs are determined without regard to the merger. Consequently, separate Schedules B of Form 5500 are filed for the plans for the plan year in which the merger occurs without regard to the merger in such a case. Any contribution for the plan year that is made to the trust after the date of the merger may be credited on either of the Schedules B provided that the contribution is made for such plan within the period described in § 412(c)(10). For the plan year following the plan year in which the merger occurs, the minimum funding standard and the deductible limit are determined for the plan after the merger by following the procedures set forth in paragraphs (8), (9), (10), (11) and (12) above as if the merger occurred on the first day of such following plan year.

Section 4. Clarification and Modification of Rev. Proc. 95–51

.01 Section 4.05(5) of Rev. Proc. 95–51 (Approval for Change in Valuation Software) is modified to read as follows:

(5) The net charge to the funding standard account for the year (or for the prior year) determined using the new software does not differ from the net charge to the funding standard determined using the old soft-

ware (all other factors being held constant) by more than two percent (2%).

.02 Section 6.01(2) of Rev. Proc. 95–51 is modified to read as follows:

(2) This revenue procedure does not apply unless the plan administrator (within the meaning of § 414(g)) or an authorized representative of the plan sponsor indicates as part of the series Form 5500 for the plan year for which the change is effective that the plan administrator or plan sponsor agrees to the change in funding method. In the case of a special approval for a change in funding method described in § 4, other than the approval described in § 4.03 (Approval for Change in Funding Method for Fully Funded Terminated Plans), the requirement that the plan administrator or authorized representative of the plan sponsor agree to the change will be satisfied if the plan administrator or an authorized representative of the plan sponsor is made aware of the change before the Schedule B is filed.

.03 Section 6.02(6) of Rev. Proc. 95–51 (Non-Applicability if Negative Normal Cost or Negative Unfunded Liability Results From the Change) is modified to read as follows:

Approval to change to a method described in section 3 does not apply if, after the change in method, a negative normal cost exists. Also, approval to change to a method described in section 3 does not apply if, after the change in method, a negative unfunded liability exists, and the method (a) is a spread gain method, and (b) uses an unfunded liability in determining the normal cost. For purposes of the preceding sentence, a spread gain method is any method that does not directly calculate an accrued liability. See Rev. Rul. 81-13 for whether a funding method directly calculates an accrued liability.

.04 Section 6.02(7) of Rev. Proc. 95–51 (Non-Applicability if Change in Method is Being Made Pursuant to a Spin-off or Merger) is modified to read as follows:

Approval to change to a method described in section 3 does not apply if the funding method for a plan year is being changed in connection with a plan spin-off or merger, unless the change is made as provided in § 4.06 or § 4.07.

Section 5. Effective Date

This revenue procedure is effective for plan years commencing on or after January 1, 1999.

Section 6. Effect on Other Revenue Procedures

Rev. Proc. 95–51, as clarified and modified by Rev. Proc. 98–10, is modified.

Section 7. Drafting Information

The principal author of this revenue procedure is James E. Holland, Jr. of the Employee Plans Division. For further information regarding this revenue procedure, call (202) 622-6076 between 2:30 and 3:30 Eastern time (not a toll free number) Monday through Thursday. Mr. Holland's number is (202) 622-6730 (also not a toll free number).